

**THE HONOURABLE SRI JUSTICE
GODA RAGHURAM
AND
THE HONOURABLE SRI JUSTICE
R.SUBHASH REDDY**

WRIT PETITION No. 22374 of 2007

Dated: 28-11-2007

Between:

M.Rajkumar and others

...Petitioners

and

The Registrar General,
High Court of Andhra Pradesh,
Hyderabad

...Respondent

W.P.No. 22374 of 2007

Order: (Per GR, J)

The writ petition is filed for the relief as under:

“to issue order or direction one in the nature of Mandamus declaring the action of the Respondent in not declaring the results of the candidates who secured 25% and above in the Scheduled Castes & Scheduled Tribes category, 35% and above in the Backward Classes category and 40% and above in the Other Classes category to write the Written Test scheduled to be held on 28-10-2007 which is against the rules prescribed in the Notification No. 1/2007-RC dated 14-5-2007 and information/instructions issued to the candidates is illegal, arbitrary and violative of Article – 14 and 16 of Constitution of India. Consequently direct the Respondent to allow the petitioners to write Written Test who have secured 25% and above in the Scheduled Castes and Scheduled Tribes category, 35% and above in the Backward Classes category and 40% and above in the Other Classes category.”

The petitioners claim to be practicing advocates who had applied for the post of Junior Civil Judges pursuant to the recruitment notification published in the English daily on 15-5-

2007.

According to Clause 7 of the notification, which enumerates the selection process, the selection will be by way of Screening Test and Written Test followed by oral examination by an interview. In the detailed information/instructions to the candidates also it is spelt out that there would be a preliminary Screening Test and candidates qualified in the Screening Test will be subjected to written examination and oral interview. This information brochure further enumerated that the written test will consist of two papers in Civil law and Criminal law and the oral examination would be for 25 marks and that written examination will be on the specified disciplines/topics of law. Clause 2 of this information brochure states that candidates belonging to SC and ST/BC/OC who secure atleast 25/35/40 percent of marks respectively, in each of the papers shall alone be eligible for admission to oral examination. Another clause of the brochure specifies that the High Court reserves the discretion to summon such number of successful candidates in Written Examination for each vacancy from the top of the merit list, for interview.

According to the petitioners, they appeared at the preliminary Screening Test on 26-8-2007, the test was based on objective type with multiple choice answers and the results thereof were announced on 26-9-2007. The petitioners did not qualify in the screening test to be called for

the written examination. On enquiry, the petitioners were informed by the respondent that a criteria is evolved to select the candidates qualified in the preliminary Screening Test for assessing eligibility to appear for the written examination. According to their information, 55% for SC & ST candidates, 57% for BC candidates and 60% for General candidates were the minimum marks evolved as the eligibility criteria for the written examination. In the circumstances, the writ petition is filed alleging that the petitioners have unfairly and arbitrarily denied opportunity for public employment. The petitioners admit to have secured 51, 49, 56 and 50 percent of marks respectively at the preliminary Screening Test in the context of their belonging to SC, ST, BC and OC community respectively. In accordance with the criteria evolved by the respondent for the eligibility of candidates attempting the preliminary Screening Test, the petitioners did not qualify, therefore, the contention is that the Screening Test is itself an arbitrary and unreasonable impediment to public employment.

The respondent has filed a counter-affidavit wherein a preliminary objection is taken as to the maintainability of the writ petition on the ground that the High Court of Andhra Pradesh is not impleaded as a party to the writ petition and instead the sole party respondent is the Registrar General, High Court of Andhra Pradesh. On merits, the respondent asserts that under the notification for general recruitment in the A.P. State Judicial Service it was made clear that a total

of 105 posts were sought to be filled up out of which 84 were to be filled by direct recruitment and the remaining 21 by 'recruitment by transfer'. The notification also spelt out the vacancies earmarked for reserved categories of SC, ST, BC, OC and women. The requirement of a Screening test and written test followed by oral interview has also been specified in the notification. It is further contended that the Supreme Court by the judgment dated 4-1-2007 in **Malik Mazhar Sultan v. UPPSC**^[1] issued certain directions with regard to the recruitment process to be adopted in the appointment of District Judges, Senior Civil Judges and Junior Civil Judges, wherein it was directed that a ratio of 10:1 should be maintained for calling eligible candidates to the written examination for the available vacancies, from amongst the candidates who appeared for the Screening Test. In effectuation of this directive, the Screening Test was held and in evaluation of the result of the Screening Test, the appropriate Committee of the High Court a meeting held on 20-9-2007 discussed the issue of selection of candidates for appearing at the Written Test so as to ensure compliance with the direction of the Supreme Court with regard to the maintenance of the 10:1 ratio. The Committee evolved a principle, on the basis of a factual situation obtaining from the preliminary Screening Test, that the minimum percentage of marks shall be 55, 57 and 57 for the candidates belonging to SC, ST and BC respectively. Since only 57 ST candidates appeared for the Screening Test in the ratio of 1:10, all the

candidates are to be called for written test and since the number of candidates who applied for recruitment by transfer is less than the ratio of 10:1 all the candidates who applied for recruitment by transfer were to be called. Accordingly the results of the preliminary Screening Test were declared indicating the names of candidates found eligible to appear for the written examination.

On the above contentions the counter of the 1st respondent asserts that there is neither illegality, lack of transparency or irrationality involved in the conduct of the preliminary Screening test or in the over all procedure followed for recruitment.

It is not the case of the petitioners that the syllabus or the scheme of the preliminary Screening Test is wholly extraneous or unrelated to the process of recruitment for the post of Civil Judge Junior Division nor is it the petitioners case that there need be no screening mechanism for appointment. In view of the directions of the Supreme Court in the judgment *supra*, the recruitment process for Civil Judge, Junior Division had to evolve a procedure to limit the number of candidates appearing at the critical written examination stage to 10 times the number of posts so as to infuse a rational evaluation process. This requirement is evolved to prune down the large number of applicants for each post by holding a preliminary Screening Test.

Apart from a vague assertion that a preliminary Screening Test *per se* impacts the expectation to public employment, the petitioners do not make out any normative or logical case for a declaration that the conduct of a preliminary Screening Test as a part of the scheme of recruitment, to be followed by written examination and oral interview is *per se* irrational or unconstitutional. It is a well settled principle that this Court does not sit in appeal over the policy choice of the State unless the policy is shown to be perverse or clearly unconstitutional in the sense of being inimical to a clearly expressed constitutional or legal value. It is not within the province of this Court to interdict or invalidate a rational policy choice, either legislative or executive. This discipline of judicial review is well entrenched and equally well established. Within those parameters and on the basis of the contentions urged on behalf of the petitioners, no arbitrariness or irrationality is discernable in the conduct of the recruitment process for recruitment of Civil Judge, Junior Division in the Judicial service of the State. The writ petition on merits must therefore, fail.

There is another reason as to why the writ petition must fail. The petitioners have not chosen to implead the High Court of Andhra Pradesh which evolved the process of recruitment and orchestrated the recruitment process, as a party to the writ petition. Instead, the petitioners have

chosen to implead the Registrar General, High Court of Andhra Pradesh. The Registrar General is a mere State actor performing the functions of the High Court. The High Court being a juristic persona ought to be impleaded in its name as a proper and necessary party to the writ petition. The principle on this aspect is reiterated by this Court in ***Y.Susheela v. Asst. General Manager (Admn.) for Chief General Manager, BSNL***^[2]. The petitioners have failed to implead the proper and necessary party. This is another substantive reason why the writ petition must fail.

The writ petition is accordingly dismissed, but in the circumstances, without costs.

GODA RAGHURAM, J

28th November, 2007

R.SUBHASH REDDY, J

GRR

^[1] 2006 (3) Supreme 493

^[2] 2007 (5) ALT 691 (DB)